

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.9236 OF 2024

Juber Alam Ansari

...Petitioner

V/s.

Grievance Redressal Committee
and Ors.

...Respondents

Mr. Nitesh Acharya with *Mr. Akash S. Bhogil for the Petitioner.*

Mr. J.P. Patil, AGP for Respondent Nos.1, 3 and 9-State.

Mr. Arman Parve with *Ms. Bushra Sayed for Respondent No.6.*

CORAM: SANDEEP V. MARNE, J.

Dated: 5 MAY 2025.

P.C.:

1. **Rule.** *Rule* is made returnable forthwith. With the consent of the learned counsel appearing for parties, the Petition is taken up for hearing and final disposal.

2. Petition challenges order dated 30 April 2024 passed by the Grievance Redressal Committee, Mumbai (**GRC**), by which the order passed by the Additional Collector (Encroachment/ Removal) Eastern Suburbs on 2 May 2023 has been set aside. By order dated 2 May 2023, the Additional Collector had granted liberty to the Respondent No.6 to make an

application to the Competent Authority for the purpose of deciding her eligibility for inclusion of her name in the Annexure-II. Petitioner, whose name has been reflected in Annexure-II certified on 13 October 2003 and who has already received rehabilitation tenement in the year 2015, got aggrieved by order dated 2 May 2023, which contemplated conduct of enquiry into competing claims of Petitioner and Respondent No.6 for inclusion of name in Annexure-II. Petitioner succeeded in his appeal before the GRC, which has set aside the order of the Additional Collector dated 2 May 2023. However, despite allowing the appeal preferred by the Petitioner, GRC has still proceeded to remand the proceedings to the Competent Authority for decision of the competing claims between Petitioner and Respondent No.6 about their eligibility. Thus, despite succeeding before the GRC, operative portion of the order has gone against the Petitioner, who has accordingly filed the present Petition.

3. Heard Mr. Acharya, the learned counsel appearing for the Petitioner, Mr. Parve, the learned counsel appearing for Respondent No.6 and Mr. J.P. Patil, the learned AGP appearing for the Respondent Nos.1, 3 and 9-State.

4. In the present case, Annexure-II has been certified by the Additional Collector (E & R) Western Suburbs on 13 October 2003, in which name of the Petitioner came to be included at Serial No.28 in respect of Structure T/13. Respondent No.6 claims that the Petitioner had already sold the said structure at

Serial No.28 in his favour in the year 1999. However, it appears that Respondent No.6 did not raise any objection about inclusion of name of Petitioner in Annexure-II in 2003 for a considerable period of time. This conduct is sought to be explained by Respondent No.6 by contending that amount of Rs.7 lakh towards rent was transferred in her bank account by the then promoter and Respondent No.6 accordingly carried a belief that she is already held eligible. It is contended that Respondent No.6 is an illiterate lady and therefore did not verify the entries in the Annexure-II. It is contended that the developer could not complete the project and went bankrupt, because of which the whole project had come to a standstill and therefore Respondent No. 6 did not feel it necessary to file proceedings regarding her eligibility.

5. At the same time, Petitioner came to be granted rehab tenement by the then developer on the strength of inclusion of his name in Annexure-II. Respondent No.6 apparently did not challenge allotment of rehab tenement in favour of the Petitioner. It is only in the year 2022 that the Respondent No.6 thought of challenging inclusion of Petitioner's name in Annexure-II and sought inclusion of her own name therein. Curiously, proceedings for challenging inclusion of name of Petitioner were filed before Additional Collector (E & R), Eastern Suburbs, who had certified Annexure-II. Upon being questioned as to how Additional Collector could have acted as an Appellate Authority over his own order, Mr. Parve would rely upon circular dated 27 September 2011, in which State

Government has directed the Competent Authority to *suo motu* act in cases where eligibility was premised on bogus documents. It is Mr. Parve's contention that Respondent No.6 filed application before the Additional Collector in terms of the Circular dated 27 September 2011.

6. In my view, Circular dated 27 September 2011 has no application to the present case. It is not the case of Respondent No.6 that Petitioner relied upon any bogus documents to establish his eligibility. The case does not involve allegation that no structure existed but documents were manufactured for inclusion of names in Annexure-II. It therefore cannot be contended that claim of Petitioner was premised on any bogus document. Therefore, special dispensation made by the State Government by Circular dated 27 September 2011 empowering the Competent Authority to decide correctness of Annexure-II certificate by him would have no application to the present case. Correct course of action for the Petitioner was to challenge Annexure-II by filing appeal under Section 35 of the Maharashtra Slum Areas(Improvement, Clearance and Redevelopment) Act, 1971 (**the Slum Act**).

7. The Annexure-II has been prepared by the Additional Collector (E & R) Western Suburbs while performing the role of the Competent Authority. By Circular dated 17 January 2017, it is directed that if Annexure-II is prepared by the Additional Collector (E & R) Western Suburbs acting as a Competent Authority, the Appeal shall be heard by the Additional Collector

(E & R) Eastern Suburbs. Paragraph 1 of Circular dated 17 January 2017 provides thus:

ज्या प्रकरणांमध्ये अपर जिल्हाधिकारी (अति /निष्का) पश्चिम उपनगरे यांनी यापूर्वी सक्षम प्राधिकारी म्हणून निर्णय दिलेला असेल, त्यासंदर्भातील दाखल झालेल्या अपिलांची सुनावणी अपर जिल्हाधिकारी (अति /निष्का) पूर्व उपनगरे यांनी घ्यावी.

8. Thus, Respondent No.6 will have to file appeal before the Additional Collector (E & R) Eastern Suburbs under the provisions of Section 35 of the Slum Act. So far as the aspect of delay is concerned, the period between date of filing of application before the Additional Collector till today will have to be necessarily excluded. However, Respondent No.6 will have to justify the delay in respect of the period before filing of proceedings before the Additional Collector.

9. In the present case, it appears that power of Appellate Authority is exercised by Additional Collector (E & R) Western Suburbs. Therefore, exercise of jurisdiction by Additional Collector (E & R) Eastern Suburbs over Annexure-II prepared by Additional Collector (E & R) Western Suburbs acting as Competent Authority appears to be in order. The only difficulty is that Appellate Authority has apparently not dealt with the issue of delay in filing the appeal by the 6th Respondent. Annexure-II has been certified on 13 October 2003 whereas the appeal was apparently preferred in the year 2022. In that view of the matter, it was necessary for Respondent No.6 to seek condonation of delay in filing the appeal. The application for condonation of delay needs to be decided after hearing the Petitioner. In my

view therefore, proceedings deserve to be remanded before the Appellate Authority for deciding the issue of condonation of delay and in the event of the delay being condoned, the Appellate Authority may proceed to decide the appeal on merits.

10. I accordingly proceed to pass the following order:

- (i) Order dated 30 April 2024 passed by the GRC as well as order dated 2 May 2023 passed by the Appellate Authority are set aside.
- (ii) Appeal is remanded before the Additional Collector (E & R) Eastern Suburbs, who shall proceed to decide the same afresh by taking a decision on application for condonation of delay.
- (iii) Respondent No.6 would be at liberty to file an application for condonation of delay, to which Petitioner shall be entitled to file a reply. It is only in the event of Additional Collector condoning the delay, he shall proceed to decide the merits of the case.
- (iv) The Appellate Authority shall proceed to decide the remanded proceedings in an expeditious manner, preferably within a period of six months.
- (v) All contentions of the parties on merits are expressly kept open. The Appellate Authority shall not be influenced by any of the observations made by this Court in the present order while deciding the remanded proceedings.

11. With the above directions, Petition is **partly allowed**. Rule is made partly absolute. No costs.

[SANDEEP V. MARNE, J.]